

DEPUTY JUDGE ADVOCATE'S OFFICE
7708 WAR CRIMES GROUP
EUROPEAN COMMAND
APO 407

*WCT Report
608*

14 November 1947

UNITED STATES)
))
 v.)
Alois MUEHLBAUER, et al.)

Case No. 000-50-2-97

REVIEW AND RECOMMENDATIONS

I. TRIAL DATA: The accused were tried at Dachau, Germany, 11 June 1947, before a General Military Government Court.

II. CHARGES AND PARTICULARS:

FIRST CHARGE: Violation of the Laws and Usages of War.

Particulars: In that August Wilhelm STOLTZ and Alois MUEHLBAUER acting in pursuance of a common design to commit the acts herein-after alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did, at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately, and wrongfully encourage, aid, abet and participate in the subjection of civilian nationals of nations then at war with the then German Reich to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such civilian nationals being unknown but aggregating many thousands who were then and there in the custody of the German Reich in exercise of belligerent control.

SECOND CHARGE: Violation of the Laws and Usages of War.

Particulars: In that August Wilhelm STOLTZ and Alois MUEHLBAUER acting in pursuance of a common design to commit the acts herein-after alleged, and as individual(s) aiding in the operation of the Dachau Concentration Camp and camps subsidiary thereto, did at or in the vicinity of DACHAU and LANDSBERG, Germany, between about 1 January 1942 and about 29 April 1945, willfully, deliberately and wrongfully encourage, aid, abet and participate in the subjection of members of the armed forces of nations then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, to cruelties and mistreatment, including killings, beatings, tortures, starvation, abuses and indignities, the exact names and numbers of such prisoners of war being unknown, but aggregating many hundreds.

III. SUMMARY OF EVIDENCE: Between the dates alleged, accused STOLTZ served as a noncommissioned officer and commissioned officer at the Dachau Concentration Camp and outcamps Allach and Kempten of that concentration camp system. Accused MUEHLBAUER, a criminal inmate, served as capo and

overcaps at outcamp Kempton during parts of 1944 and 1945. Individual atrocities were shown to have been committed by WUEHLBAUER at outcamp Kempton. STOLTZ, the then Camp Commander of outcamp Kempton, ordered the institution of a punishment system, and had knowledge of the mistreatment of inmates. Prosecution's P-Ex-2 is a certified copy of the charges, particulars, findings and sentences in the parent Dachau Concentration Camp case (United States v. Weiss, et al., OOC-50-2, DJAWC, March 1946, hereinafter referred to as the "Parent Case"; see Section V, post).

IV. EVIDENCE AND RECOMMENDATIONS:

1. August Wilhelm STOLTZ

Nationality:	German
Age:	58
Civilian Status:	Unknown
Party Status:	NSDAP since 1933
Military Status:	Waffen SS, First Lieutenant
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	4 years, commencing 5 May 1945

Evidence for Prosecution: The accused stated in his extrajudicial sworn testimony that he joined the Allgemeine SS in 1933 and transferred to the Waffen SS in 1940, after which he was successively promoted, becoming a first lieutenant in 1945. He served as guard, platoon leader, and company commander at Dachau Concentration Camp from 1940 until June 1944. From October 1944 until December 1944 he was Commanding Officer at outcamp Alach and from December 1944 until April 1945 he was the Commanding Officer and detail leader at outcamp Kempton, taking part as a leader in the final inmate evacuation march that month. There were 300 inmates and 60 guards on the march (R 58; P-Ex 4a).

Witness Lehrer, a former German civilian employee in the armament works at outcamp Kempton, testified that the inmates were emaciated and looked starved, and that they performed 10 hours of heavy labor daily with insufficient and badly prepared food (R 7-9). Witness Janitzki, a former German inmate of outcamp Kempton, testified that after the accused became

Camp Commandant the food became worse, and that the accused established a punishment bunker which had no light or sanitary facilities and in which the inmates were required to stand in water (R 18-20). This is corroborated by witness Coniglio (R 29, 30). In addition to corroborating the testimony given by witnesses Janitzki and Coniglio, witness Rushle, a former inmate, testified that after the accused became Camp Commander the guards were instructed to be severe with inmates, and that he deliberately hindered the distribution of Red Cross parcels to the inmates (R 48-50).

Evidence for Defense: Witness Attenberger, a former guard at outcamp Kempton, testified that he did not see water on the floor of the punishment bunker (R 63). The accused elected not to take the stand in his defense (R 75).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petitions for Review nor Petitions for Clemency were filed.

Recommendation: That the findings and sentence be approved.

2. Alois MUEHLBAUER

Nationality:	German
Age:	31
Civilian Status:	Electrical Engineer
Party Status:	None
Military Status:	None
Plea:	NG Charge I; NG Charge II
Findings:	G Charge I; G Charge II
Sentence:	6 years, commencing 30 July 1946

Evidence for Prosecution: This accused, a convicted criminal, served as capo and obercapo at the Kempton outcamp of the Dachau Concentration Camp system during parts of 1944 and 1945 (R 41, P-Ex 3a).

Witness Lohrer, a former German civilian worker in the armament works at outcamp Kempton, testified that the accused was originally a capo and that he was later made an obercapo at the outcamp, and that the accused would beat inmates like a mad man. Lohrer further testified that the

inmates looked emaciated and starved, and received wholly inadequate food, even though the work was very heavy (R 7-9). Witness Schmid, a German civilian testified that he saw the accused beat a French inmate for talking to French civilians (R 11, 12). Witness Janitzki, a former German inmate of outcamp Kempton, testified that he saw the accused beat an Italian inmate about the head and body, and that he heard of eight other cases in which the accused beat inmates (R 16, 17). Witness Coniglio, a former inmate, testified that at outcamp Kempton the accused beat an Italian inmate with a rubber hose so severely that he was taken to the dispensary at Dachau (R 27, 28). Witness Weber, a former German inmate at outcamp Kempton during parts of 1944 and 1945, testified that the accused beat Russians, Poles, Frenchmen, Yugoslavs, Italians and Belgians, using a rubber hose or stick (R 37, 38, and corroborated in R 46). Witness Rueshle, a former inmate, testified that the accused beat for no reason other than pure sadism (R 55).

Evidence for Defense: Witness Thorenz, a former guard at outcamp Kempton, testified that the accused always tried to get additional food for the inmates from the civilian kitchen (R 65). The accused elected not to take the stand in his own behalf (R 75).

Sufficiency of Evidence: The findings of guilty are warranted by the evidence. The sentence is not excessive.

Petitions: No Petition for Review was filed. Petitions for Clemency were filed by accused's wife, Therese Muehlbauer, 21 October 1947; Karl Zimmermann, 19 September 1947; and Ferdinand Wurtz, 13 October 1947.

Recommendation: That the findings and sentence be approved.

QUESTIONS OF LAW:

Jurisdiction: It is clear that the Court had jurisdiction of the persons of the accused and of the subject matter.

Application of Parent Case: The Court was required to take cognizance of the decision rendered in the Parent Case, including the findings of the Court therein, that the case at bar was a conspiracy operation was criminal in nature and that the participants therein, acting in pursuance of a common design,

subjected persons to killings, beatings, tortures, etc., and was warranted in inferring that those shown to have participated knew of the criminal nature thereof (Letter, Headquarters, United States Forces, European Theater, file AG 000.5 JAG-AGO, subject: "Trial of War Crimes Cases", 14 October 1946, and the Parent Case). Both of the accused were shown to have participated in the mass atrocity and the Court was warranted by the evidence adduced, either in the Parent Case or in this subsequent proceedings, in concluding as to them that they not only participated to a substantial degree but that the nature and extent of their participation were such as to warrant the sentences imposed.

Examination of the entire record fails to disclose any error or omission which resulted in injustice to the accused.

VI. CONCLUSIONS:

1. It is recommended that the findings and the sentences be approved.
2. Legal Forms Nos. 13 and 16 to accomplish this result are attached hereto, should it meet with approval.

GEORGE M. LENTZ
Captain, JAGD
Post Trial Branch

Having examined the record of trial, I concur, this _____ day of
_____ 1948.

C. E. STRAIGHT
Lieutenant Colonel, JAGD
Deputy Judge Advocate
for War Crimes

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
2 Feb 1948SUBJECT: Execution of Sentence in the Case of the United States v.
Alois MUEHLBAUER, etal. (Case No. 000-50-2-97)TO : Commanding General
First Military District
APO 1, U.S. Army

Reference is made to letter, Headquarters, US Forces,
European Theater, 26 February 1947, File AG 383 JAG-400, subject:
"Designation of Prisons for War Criminals," and to the inclosed
copies of the Order on Review in the above entitled case as to
accused Alois MUEHLBAUER.

Upon compliance with the Order on Review the certificate
below will be completed and returned to the Deputy Judge Advocate
for War Crimes, 7708 War Crimes Group, APO 407, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ George W. Pope
GEORGE W. POPE
Colonel, A.G.D.
Adjutant General

1 Incl:
1 Form No. 13 (in trip)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on
Review was carried into execution at War Criminal Prison No. 1,
Landsberg, Germany, on 18 February 1948, at 1000.
(Date) (Hour)

/s/ David A. Oakley
(Countersignature and Rank
of Witnessing Officer)
DAVID A. OAKLEY, 1st Lt. Cm1C
Assistant Prison Director

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON, Capt. CMP
WAR CRIMES PRISON LANDSBERG
(Organization)

MILITARY GOVERNMENT COURT
MILITÄRGERICHTOrder on Review
Verfügung nach ÜberprüfungCase No. _____ Order No. _____
Strafsache Nr. 000-50-2-97 Verfügung Nr. _____Whereas one Alois MUEHLBAUER
Name of accused Name des/der Angeklagten
was convicted of the offence of participation in Dachau Concentra-
tion Camp mass atrocity
wegen der folgenden strafbaren Handlung Teilnahme an Massengreul-
taten im Konzentrationslager Dachauby the General Military Court at Dachau, Germany
in Dachau, Deutschland
vom Oberen Militärgerichte Address of Court
Anschrift des Gerichtsand sentenced to imprisonment for six years, commencing 30 July 1946
schuldig erkannt und zu sechs Jahren Gefängnis verurteilt mit Wir-
kung 30 Juli 1946by Judgment dated the 11 June 1947
durch Urteil vom 11 Juni 1947 and
Date DatumWhereas the case has now come before me by way of review and
Diese Strafsache ist mir zur Überprüfung vorgelegt worden undafter due consideration and in exercise of the powers conferred
nach entsprechendem Studium des Sachverhaltes und in Ausübung derupon me, I hereby order:
mir übertragenen Befugnisse verfüge ich:That the findings and sentence are approved. The Commanding
General, First Military District, will confine Alois MUEHLBAUER in
War Criminal Prison No. 1, Landsberg, Germany, for a period of six
years, commencing 30 July 1946.Dass der Befund und das Urteil bestaetigt werden. Der Kom-
mandierende General, vom Militaerbezirk I, wird die Inhaftierung
von Alois MUEHLBAUER im Kriegsverbrechergefängnis Nr. 1, Landsberg,
Deutschland, für die Dauer von sechs Jahren, mit Wirkung ab 30
Juli 1946.Dated this _____
Gegeben am 29 Jan 1948/s/ J. L. Harbaugh, Jr.
Signature of Reviewing Authority
Unterschrift der nachprüfenden Behörde
J. L. HARBAUGH, JR.
Colonel JAGD
Judge Advocate
Title
Titel

HEADQUARTERS
EUROPEAN COMMAND

AG 383 JAG

APO 757
2 Feb 1948SUBJECT: Execution of Sentence in the Case of the United States v.
Alois MUEHLBAUER, et al (Case No. 000-50-2-97)TO : Commanding General
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Reference is made to letter, Headquarters, US Forces,
European Theater, 26 February 1947, File AG 383 JAG-AGO, subject:
"Designation of Prisons for War Criminals," and to the inclosed
copies of the Order on Review in the above entitled case as to
accused August Wilhelm STOLTZ.

Upon compliance with the Order on Review the certificate
below will be completed and returned to the Deputy Judge Advocate
for War Crimes, 7708 War Crimes Group, APO 407, U.S. Army.

BY COMMAND OF GENERAL CLAY:

/s/ George W. Pope
GEORGE W. POPE
Colonel, A.G.D.
Adjutant General

1 Incl:
1 Form No. 13 (in trip)

Frankfurt 7175

CERTIFICATE OF COMPLIANCE

The sentence covered by the above described Order on
Review was carried into execution at War Criminal Prison No. 1,
Landsberg, Germany, on 18 February 1948, at 1000.
(Date) (Hour)

/s/ Lloyd A. Wilson
(Signature and Rank)
LLOYD A. WILSON, Capt. CMP
War Crimes Prison Landsberg
(Organization)

/s/ David A. Oakley
(Countersignature and Rank
of Witnessing Officer)
DAVID A. OAKLEY, 1st Lt. CmlC
Assistant Prison Director

MILITARY GOVERNMENT COURT
MILITÄRGERICHTOrder on Review
Verfügung nach ÜberprüfungCase No. _____ Order No. _____
Strafsache Nr. 000-50-2-97 Verfügung Nr. _____

Whereas one August Wilhelm STOLTZ
 Name of accused Name des/der Angeklagten
 was convicted of the offence of participation in Dachau Concentra-
 tion Camp mass atrocity
 wegen der folgenden strafbaren Handlung Teilnahme an Massengreuel-
 taten im Konzentrationslager Dachau

by the General Military Court at Dachau, Germany
 in Dachau, Deutschland
 vom Oberen Militärgerichte Address of Court
 Anschrift des Gerichts

and sentenced to imprisonment for four years, commencing 5 May 1945
 schuldig erkannt und zu vier Jahren Gefängnis verurteilt mit Wir-
 kung ab 5 Mai 1945

by Judgment dated the 11 June 1947
 durch Urteil vom 11 Juni 1947 and
 Date Datum

Whereas the case has now come before me by way of review and
 Diese Strafsache ist mir zur Überprüfung vorgelegt worden und

after due consideration and in exercise of the powers conferred
 nach entsprechendem Studium des Sachverhaltes und in Ausübung der

upon me, I hereby order:
 mir Übertragenen Befugnisse verfüge ich:

That the findings and sentence are approved. The Commanding
 General, First Military District, will confine August Wilhelm
 STOLTZ in War Criminal Prison No. 1, Landsberg, Germany, for a
 period of four years, commencing 5 May 1945.

Dass der Befund und das Urteil bestätigt werden. Der Kom-
 mandierende General, vom Militärbezirk I, wird die Inhaftierung
 von August Wilhelm STOLTZ im Kriegsverbrechergefängnis Nr. 1,
 Landsberg, Deutschland, für die Dauer von vier Jahren, mit Wirkung
 ab 5 Mai 1945.

Dated this _____
 Gegeben am 29 Jan 1948

/s/ J. L. Harbaugh, Jr.
 Signature of Reviewing Authority
 Unterschrift der nachprüfenden Behörde
 J. L. HARBAUGH, JR.
 Colonel JAGD
 Judge Advocate
 Title
 Titel